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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,248	09/03/2004	Peng Lee	026018.50278	5247
28172 7590 03/13/2007 BUTLER, SNOW, O'MARA, STEVENS & CANNADA PLLC 6075 POPLAR AVENUE SUITE 500 MEMPHIS, TN 38119			EXAMINER JAGAN, MIRELLYS	
			ART UNIT	PAPER NUMBER
			2859	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/13/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,248	LEE, PENG	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mirellys Jagan	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6 and 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1, 2, 6, and 7 are objected to because of the following informalities:

In claim 1, the term "provisionally" in line 4 implies that there is an additional step to be performed. However no other steps pertaining this step (step (a)) are claimed. Accordingly, the claim has been interpreted, for purposes of examination, to state that the thermal image is used to detect an active termite infestation.

Claims 2, 6, and 7 are objected to for being dependent on objected base claim 1.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,495,518 to Sanoian in view of U.S. Patent Application Publication 2003/0039612 to Ovington and U.S. Patent Application Publication 2003/0146840 to Donskoy et al [hereinafter Donskoy].

Sanoian discloses a method comprising using a thermal imaging camera to receive a

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thermal image of a wooden pole to detect the indication of moisture at a site (see column 4, lines 8-22); wherein the thermal image is received without prior electromagnetic radiation of the pole, and the pole is heated or cooled. He states that wooden poles absorb moisture depending on their interior structure, the interior structure depending on the rot, porous sections, and hollows, e.g., as created by birds nests, squirrels, i.e., animal attack. These sections will emit different IR patterns versus sounder wood sections and such differences can be detected by means of the IR video camera and display (see column 2, lines 1-35; column 3, lines 29-36; and column 4, lines 1-5, 23-28, and 52-57).

Sanoian does not disclose the method being performed on a residential structure, correlating moisture to termite damage, or confirming that there is an active termite infestation in the sites by using a microwave motion detector.

Ovington discloses that it is known that moisture is an indicator and is used to detect termite infestation in a wooden structure (see paragraph 3, lines 4-7; paragraph 4, last 3 lines; paragraph 5; and paragraph 7, last 4 lines).

Donskoy discloses a method of reliably detecting the presence of termites in a wooden residential structure by using a microwave motion detector to nondestructively detect movement of the termites in the structure. Donskoy teaches that it is desirable to perform the test on a wood residential structure and on wood poles to test the structural integrity of the wooden structures (see paragraphs 22-24).

Referring to claim 1, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of Sanoian by correlating the possible detected moisture sites to the possibility of termite infestation, since Ovington teaches

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that termites must live in moisture and it is known that moisture in a wooden structure is a possible indicator or termite infestation.

Furthermore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of Sanoian by further using a microwave motion detector to detect the presence of termites, as taught by Donskoy, in order to determine if there are termites in the identified moist sites, thus confirming that there is a termite infestation in the sites.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of Sanoian by performing the method on a residential structure since Donskoy teaches that it is desirable to test both a residential structure and a wooden pole structure for termite infestation using IR detection means to determine the structural integrity of the wooden structures.

### *Response to Arguments*

4. Applicant's arguments with respect to the claims have been considered but are not persuasive in view of the new ground(s) of rejection.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 11AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in cursive script, appearing to read "G. Verbitsky".

MJ

March 1, 2007

**GAIL VERBITSKY  
PRIMARY EXAMINER**